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Service by fax not accepted

September 15, 2020

VIA ECF

Hon. Gary R. Brown, U.S. District Judge
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: USAA General Indemnity Company v. Alric L. Kennedy, et al.
(Civil Case No. 2:20 CV-03883-GRB-ST)

Dear Judge Brown:

We represent defendant, Alric L. Kennedy (“Kennedy”), in connection with the above-entitled matter. We write in response to the correspondence of Michael Giordano, Esq. of McDonnell Adels & Klestzick, PLLC, attorneys for plaintiff, USAA General Indemnity Company (“USAA”), dated September 9, 2020, which requested a pre-motion conference in anticipation of USAA’s motion to remand the instant matter to Supreme Court of the State of New York, County of Nassau (“New York State Supreme Court”).

Upon our review of the applicable law, we realized that although this matter meets to requirements of diversity jurisdiction [28 U.S.C. §1332(a)(1)], removal is prohibited by the “forum defendant rule” [28 U.S.C. §1447(b)(2)] and the “unanimity rule” [28 U.S.C. §1446(b)(2)(a)]. As a result of our error, we agreed with USAA’s attorneys to stipulate to remand this matter back to New York State Supreme Court. We notified USAA’s counsel of our decision on September 11, 2020 via email. USAA’s counsel accepted our offer to stipulate to remand this matter and agreed not to seek costs and attorneys’ fees. The parties are in the process of determining the best and most judicially economical way of accomplishing remand.

Kennedy maintains his denial of the allegations of fraud and misrepresentation against him, as set forth in his Answer, Affirmative Defenses, Counterclaim and Cross-Claim, dated August 31, 2020 (“Answer”). In addition, Kennedy stands by his allegations via counterclaim against USAA and via cross-claim against co-defendant, Bernice Wallace, in his Answer.

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We apologize to the Court for any inconvenience or expenditure of resources that may have been caused by our erroneous attempt to remove this action to U.S. District Court for the Eastern District of New York and welcome any guidance from Court with respect to most desirable and economical way to remove this matter from the Court's docket.

Very respectfully,
LAW OFFICES OF NEIL MOLDOVAN, P.C.


By: James M. Marino

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JMM/sh

cc: McDonnell Adels & Klestzick, PLLC (via ECF)
Adverse Participant Defendant, Bernice Wallace and all Provider Defendants (via first class mail)